

**SCOTTSDALE PLANNING COMMISSION SPECIAL MEETING
KIVA - CITY HALL
3939 N. DRINKWATER BOULEVARD
MARCH 29, 2004**

Chairman Gulino called the Special Planning Commission Meeting to order at 5:09 P.M.

ROLL CALL

Present: David Gulino, Chairman
Steve Steinberg, Vice Chairman
Commissioners: David Barnett, James Heitel, Eric Hess, Jeffrey Schwartz,
And Steven Steinke

Staff Present: Randy Grant, Kroy Ekblaw, Al Ward, Don Hadder, Joe Morris, Pat Boomsma

REGULAR AGENDA

1. 11-TA-2000#3 (Text Amendment/ESLO II) request by City of Scottsdale, applicant, to amend Ordinance 455 (Zoning Ordinance) Article VI. Supplementary Districts., Section 6.1010. Environmentally Sensitive Lands Ordinance (ESLO).; Section 6.1011. Purpose; Section 6.1022. Exemptions and Exceptions; Section 6.1050. Intensity of Development; Section 6.1060. Open Space Requirements.; Section 6.1070. Design Standards; Section 6.1071. Design Guidelines.; Section 6.1083. Amended Development Standards; Section 6.1090. ESL Submittal Requirements.; Section 6.1091. All Applications. This covers approximately 134 square miles of upper desert and mountain areas of Scottsdale and is located north and east of the Central Arizona Project (CAP) Canal. Staff/Applicant contact person is Al Ward, 480-312-7067.

Randy Grant gave a presentation of this text amendment, reviewing the background, purpose, community input, and the three key issues for Planning Commission reconsideration: wash protection and drainage issues; perimeter and site walls; and exemptions and exceptions. Additionally, Mr. Grant presented the ESLO Exemptions Schedule and reviewed how hardship exemptions would be achieved during different stages of development. The 24 ft. height limitation was also a concern to some.

Responding to Chairman Gulino, Mr. Grant said NAOS could count on a lot by lot basis, in regard to perimeter walls setback.

Responding to Vice Chairman Steinberg, Mr. Grant said it would be difficult to combine the storm drainage ordinance and ESLO. Additionally, he clarified that commercial properties within ESLO were not exempt but would have an opportunity to request an exemption.

Responding to Commissioner Barnett, Mr. Grant explained that persons doing remodeling would need to follow their amended development standards if their development was exempt; if they were outside of a master planned development, they would fall under the new ESLO

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requirements. In regard to the City's 50 CFS capacity maps, Mr. Grant said they were about 85% complete and would be available on-line. In regard to properties covered by enough 50+ CFS capacity washes that they wouldn't be able to build, Mr. Grant said that would be considered a hardship and could be exempted from the requirements or they would be compensated, if the city had to acquire that property.

Chairman Gulino clarified the difference between capacity and flow of washes.

Responding to Commissioner Steinke, Mr. Grant said no process had been set up as yet for hearing hardship cases by the Council, but he expected someone would make an application for a hearing and could then go through the Planning Commission and/or DR Board before going to Council. These details would be decided by the Council.

In response to Commissioner Heitel, Mr. Grant agreed this document was a prioritizing tool in protecting washes.

Responding to Chairman Gulino, Mr. Grant said the State Land Department was invited to participate in discussions of this amendment, but did not respond. Typically they have been supportive of the goals of ESLO.

Chairman Gulino clarified building height went from 26 ft. to 24 ft. in 2003. Further clarification was given in regard to construction envelopes extending no more than 12 ft. beyond the edge of improvements and that such improvements would include patios, pools, ramadas, driveways, and barns.

Chairman Gulino commented some terminology may be out of context, such as riparian and migratory wild life. Mr. Grant said the original intent in the 1991 ordinance was to identify areas where water occurred and animals used that as a way of movement. Migration allowed animals to relocate with little disruption. Chairman Gulino felt it would be better to stay away from that wording.

Public testimony opened:

Tim Montgomery, 34894 N 92nd PI, spoke in favor of staff's recommendations and presented photographs of perimeter walls constructed under today's lax rules.

Howard Myers, 6631 E Horned Owl Tr, 85262, spoke in favor, saying this would strengthen the current ordinance to make it clearer what should be happening on these properties. He presented photographs of fences and walls built in major washes.

To clarify a map presented by Mr. Myers, Joe Morris said an A0 Zone describes an area at risk of flooding during a 100-year event. There is the presumption water can spread out anywhere along the A0 zone path in that area.

Ron Ruziska, State Land Department, 1616 W Adams, 85016, said he has overseen planning and engineering for the State Land Department for the past 17 years, and was not invited to be involved in discussion of this ordinance. He felt it was being pushed through without their ability to review some of these changes and that it appeared to be an attempt to lower land values in the area. He felt the height restriction of 24 ft. would affect home values.

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He requested a postponement of a decision until the Land Department had a chance to look at these issues and see what impacts they would have on developments.

Responding to Chairman Gulino, Mr. Ruziska said he found out about this item about three weeks ago.

Commissioner Heitel noted that the State Land Department was very involved in the Foothills Overlay discussions and they did not feel at that time that 24 ft. heights were a detriment to home values. He further noted that discussions of this amendment began last October and that seemed ample time for the State Land Department to become involved. Mr. Ruziska stated he would like at least sixty days for staff at the State Land Department to review this ordinance and give their input.

Commissioner Barnett disputed the claim that the height restriction would lower values, and predicted there would be an increase instead.

Mr. Grant clarified the height in the current ESLO is 24 ft.

Paul Gilbert, representing MCO Properties, 4800 N Scottsdale Rd, #6000, 85251, spoke in support of staff's recommendations which exempted approved master planned developments. He reviewed a development which was approved in 2000 and most lots were already sold, and said it would not be feasible to change the rules of the game at this point.

Tim Bray, 11181 E Turnberry Rd, 85255, related that he was on a committee in 1987 that prepared a study on ESLO after the Corrigan/Marley case was lost. He felt this current proposal tilted the balance and was taking property from individuals. He further related how animals seemed to be moving freely around his property on the edge of the preserve, and said the city has gone too far with this ordinance. It needed a lot more work and more input from people it would affect.

Karrin Taylor, of Biskind, Hunt & Taylor, 11201 N Tatum Blvd, #330, 85028, representing the owner of a ten-acre commercial site at Pima and Union Hills, expressed issues with the current language regarding the 50+CFS capacity washes and how it would impact this property, and requested changes to this language to clarify the issues.

Lynne Lagarde, 3101 N Central, 85012, representing two types of clients, presented a letter of concerns in regard to exemptions. She wondered if a home burned down in Desert Mountain, would the owner be able to build the same home? Master planned communities should be thoroughly exempted. In regard to individual builders, she wished to be clear that they did not have to have a prepared pad or a plan for every lot on their site.

Scott Kusy, 7700 E Gainey Ranch Rd, 85258, described Wildcat Hills property he co-owns on Cave Creek Road and Bartlett Lake Road and suggested a word change to clarify flow vs. capacity. The interpretation is subjective, and the intent is not written into the ordinance.

Gregory Hughes, 5014 E Cholla St, 85254, described a home he is in process of building and his confusion about the impacts of this amendment. Mr. Grant said this project, according to the proposed Exemption Schedule, would be exempt.

Shelly McTee, Biskind, Hunt & Taylor, 11201 N Tatum, #330, 85028, believed there was the potential that her client's property could be undevelopable. She addressed some technical issues and suggested changes in regard to wash flow vs. capacity, pending applications, hardship exemption guidelines, priority list, and wildlife corridors.

One additional comment card was received from **Steven Voss**, who was opposed to this amendment but did not wish to speak.

Public testimony concluded.

Kroy Ekblaw addressed some issues raised in public testimony. He related that information was sent to the State Land Department and he would verify who it was sent to. Staff from State Land were in attendance on February 17, 2004 at the Environmental Quality Advisory Board Meeting and he was very surprised to hear about a concern for additional time.

Mr. Grant clarified other issues raised. In regard to whether a home at Desert Mountain burned down, if they were originally exempt, then they would continue that exemption forever. If there was a property that was not exempt, the new ordinance would apply to them. Regarding flexibility for standard plans, there is a process and staff would need to receive information to be certain about the amount of grading required. The intent was that we are not looking for speculative grading. In regard to flow and capacity, that was a difference in perspective. Capacity is topography, and flow is how much water flows in a wash. Flow is managing the storm water on and off the site and capacity is managing the topographic feature on the site. The realistic approach is that every wash can't be preserved, because there are so many of them and they do cover too great a portion of the site, but there is also a process of going to the DR Board for approval for wash modifications.

In addition, Mr. Grant felt it would be difficult to the process to allow exemption to projects that are pending presently DR Board approvals.

A recess was called at this time: 7:33 P.M.

Meeting reconvened: 7:40 P.M.

Responding to Commissioner Barnett, Mr. Grant said Phoenix had similar open space requirements.

Commissioner Hess said the Commission needed to move this forward and let the decision rest with the Council. The Commission has reviewed this for five months and additional hashing should be done at the Council level.

Commissioner Heitel said staff had put together a good text amendment and a lot of issues have been identified for Council. He would like to recommend the suggestion to modify one sentence to read, "In no event will NAOS selection require the preservation of more NAOS than is already required", to give clarity.

Vice Chairman Steinberg felt the definition of the 50+CFS flow rate vs. capacity should be clarified. He further felt that commercial properties should be looked at differently, as there

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were only two of them, and that they should be exempt. He was a bit nervous about the enforceability, because of some of the samples shown tonight.

Commissioner Schwartz said, looking overall at what we lose and what we gain, we would lose flexibility and gain regulation. Advancing this would serve an injustice. The big developer would be protected and the little guy would not. Many people have not had an opportunity to weigh-in and see how this would affect their property. He would be very disappointed to move this forward just to get it off their plate. He would prefer to see this item continued.

Commissioner Barnett agreed there were many people who were unaware of how this would affect their development. Over time, he felt the cost and benefits would out-weigh each other. Economically, he felt people would like this. He expressed reservations in regard to capacity and flow. He felt this was a quick turnaround and wished there could be more time after Council heard the amendment before it went into effect. He supported moving this item forward.

Commissioner Steinke felt this represented a refinement of the process already in place and the city needed to keep the standards high. He supported this with the understanding there were specific challenges ahead.

Chairman Gulino said he would not support a continuance but he did not support the document before them tonight. He would prefer to greatly simplify the grandfathering and parallel the ordinance of today, striking the rest of the information and revisions. He further stated an ordinance needed to speak to intent and there was too much that read like a construction specification, taking away from what architects and planners were hired to do. In regard to boulders, he did not agree with the definition. Furthermore, he felt hardship exemptions should be dealt with at the DR Board level. He supported the redefinition of washes and would like to replace "capacity" with "flow". Chairman Gulino also had a problem with the mixing of the issues of wildlife corridors, riparian areas, and wash corridors. He understood staff's concerns of overlapping draining issues with land issues, and felt this ordinance should speak to planning issues only; don't force land planners to make decisions on drainage issues. Therefore, it would be better to have two ordinances. Chairman Gulino further would like the preferred location of NAOS maps taken out of the Ordinance because they might be misinterpreted or used in ways not intended. Lastly, in the paragraph regarding grading plans, there are exceptions for drainage and utilities, so he felt it should include streets to be comprehensive.

COMMISSIONER SCHWARTZ MOVED TO CONTINUE THIS CASE, 11-TA-2000#3, FOR 60 DAYS FOR THE INTENT TO BE CLEARLY DELINEATED AND THEN MOVE FORWARD AN AMENDMENT TO THIS ORDINANCE REFLECTING ALL CONCERNS.

THE MOTION FAILED FOR LACK OF A SECOND.

COMMISSIONER HEITEL MOVED TO FORWARD STAFF'S RECOMMENDATION FOR CASE, 11-TA-2000#3, TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE FOLLOWING CLARIFICATIONS: "IN NO EVENT SHALL NAOS SELECTION AND LOCATION SET FORTH IN 6.1050 AND 6.1060 REQUIRE THE PRESERVATION OF MORE NAOS THAN CURRENTLY REQUIRED"; DISTINGUISH BETWEEN CAPACITY AND FLOW AND ASK COUNCIL TO MAKE THEIR PREFERENCE.

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COMMISSIONER BARNETT SECONDED THE MOTION WHICH CARRIED 6-1, WITH COMMISSIONER SCHWARTZ DISSENTING.

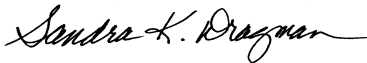
Mr. Grant clarified this motion included the recommendation of EQAB on the Exemption Schedule, providing for full exemption of master planned developments, and change of wording in the schedule to be consistent to read "Exempt if Addressed", rather than "Not Exempt Unless".

WRITTEN COMMUNICATION - None

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:10 P.M.

SUBMITTED BY:

A handwritten signature in cursive script that reads "Sandra K. Dragman".

**Sandy Dragman
Recording Secretary**

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